

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 24, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRUZ JAMES SPENCER,

Defendant.

No. 4:20-CR-06044-SMJ-1

**ORDER REGARDING SCHEDULE
FOR SENTENCING**

On this day, Defendant, accompanied by his attorney, Nicholas Wright Marchi and, appeared and pleaded guilty or was found guilty in this matter. Assistant United States Attorney Michael Davis Murphy represented the Government.

Accordingly, **IT IS HEREBY ORDERED:**

- 1.** A sentencing hearing in this matter is **SET** for **October 7, at 11:30 A.M. in Richland.**
- 2.** If the Court imposes a sentence of incarceration, Defendant shall be placed in custody at the time of sentencing. Pending sentencing, Defendant's detention status or release status shall remain pursuant to this court's previous order.

1 **3.** Sentencing will be scheduled for a total of forty-five (45) minutes. If
2 it is believed that the sentencing hearing will last longer, counsel
3 shall contact Chambers within fourteen (14) days of disclosure of the
4 presentence investigation report.

5 **4.** The United States Probation Office shall prepare a timely presentence
6 investigation report that will comply with the following schedule:

7 **A.** Not less than **thirty-five (35) days** prior to the sentencing
8 hearing, the probation officer shall disclose the presentence
9 investigation report to the Defendant, counsel for Defendant,
10 and the Government.

11 **B.** Within **fourteen (14) days** of the disclosure of the presentence
12 investigation report, counsel shall file with the Court and
13 communicate in writing to the probation office any objections
14 they may have as to factual errors or omissions; sentencing
15 classifications; sentencing guideline ranges; and policy
16 statements contained in or omitted from the report. Such
17 communication may be oral initially but shall immediately be
18 confirmed in writing to the probation officer and opposing
19 counsel.
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1 **C.** Also within **fourteen (14) days** of disclosure of the
2 presentence investigation report, counsel shall file and serve all
3 motions and memoranda pertaining to Defendant’s sentence,
4 including motions for downward or upward departures.

5 *i.* Counsel shall utilize the following format when
6 preparing initial memoranda which are limited to twenty
7 pages (absent prior Court permission to file an
8 overlength brief): I. Base Offense Level &
9 Enhancements, II. Departures, III. 18 U.S.C. 3553(a).

10 *ii.* Under the “Base Offense Level & Enhancements”
11 section, counsel shall discuss whether the PSIR’s Total
12 Offense Level calculations (not including departures) are
13 correct or incorrect, providing legal authority for the
14 party's position.

15 *iii.* Under the “Departure” section, counsel shall discuss
16 whether a downward and/or upward departure is
17 warranted under the Guidelines and provide legal
18 authority for such position.

19 *iv.* Under the “18 U.S.C. 3553(a)” section, counsel shall
20 discuss whether the resulting guideline range provides a

1 reasonable sentence sufficient, but not greater than
2 necessary, to comply with the purposes set forth in 18
3 U.S.C. 3553(a)(2), considering the other factors listed in
4 3553(a).

5 *v.* The parties are limited to one reply of no more than 7
6 pages. No other pleadings are allowed without advance
7 permission of the Court.

8 *vi.* **FAILURE TO FILE AND SERVE A MOTION FOR**
9 **DOWNWARD DEPARTURE WITHIN 14 DAYS**
10 **OF RECEIPT OF THE PRESENTENCE**
11 **INVESTIGATION REPORT WILL BE DEEMED A**
12 **WAIVER OF THE RIGHT TO DO SO.** The time
13 frame for filing and serving responses to such motions
14 shall be governed by Local Criminal Rule 45. Any
15 request with regard to self-reporting shall be made to the
16 probation office at the same time any objections/motions
17 are filed.

18 *D.* After receiving counsel's objections, the probation officer shall
19 conduct any further investigation and make any revisions to
20 the presentence report that may be necessary. The probation

1 officer may require counsel for both parties to meet with the
2 officer to discuss unresolved factual and legal issues, and
3 counsel shall make themselves available for that purpose.

4 *E.* At least **ten (10) days** prior to the date of the sentencing
5 hearing the probation officer shall submit the presentence
6 report to the sentencing judge. The report shall be
7 accompanied by an addendum setting forth any objections
8 counsel may have made, including those that have not been
9 resolved, together with the officer's comments and
10 recommendations thereon. The probation officer shall certify
11 that the contents of the report other than sentencing
12 recommendations, including any revisions or addenda, have
13 been disclosed to counsel for Defendant and the Government,
14 and that the addendum fairly states any remaining objections.

15 **5.** Except with regard to any written objection, the report of the
16 presentence investigation and computations shall be accepted by the
17 Court as accurate. For good cause shown, however, the court may
18 allow a new objection to be raised at any time before the imposition
19 of sentence. In resolving disputed issues of fact, the court may
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1 consider any reliable information presented by the probation officer,
2 Defendant, or the Government.

3 **6.** Nothing in this rule requires the disclosure of any portions of the
4 presentence report that are not disclosable under Rule 32 of the
5 Federal Rules of Criminal Procedure.

6 **7.** The presentence report shall be deemed to have been disclosed (1)
7 when a copy of the report is physically delivered; or (2) one day after
8 the availability of the report for inspection is orally communicated; or
9 (3) three days after a copy of the report, or notice of its availability is
10 mailed to counsel, whichever date is earlier.

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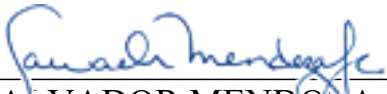
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1 **8.** Following sentencing, Defendant shall be taken into the custody of
2 the United States Marshal Service unless (1) Defendant has been
3 released prior to sentencing, (2) Defendant specifically requests the
4 opportunity to self-report, and (3) Defendant demonstrates that he is a
5 candidate for self-reporting. If Defendant requests the opportunity to
6 self-report, Defendant must demonstrate the financial ability to travel
7 to a facility on the East Coast.

8 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this order
9 and to provide copies to counsel, the U.S. Probation Office, and the U.S. Marshals
10 Service.

11 **DATED** this 24th day of June 2021.

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14 SALVADOR MENDOZA, JR.
15 United States District Judge
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